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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4148

13 **WILLIAM J. MUMBERT**

14 **P. O. Box 5457**
Tahoe City, CA 96145
Pharmacist License No. RPH 48782

A C C U S A T I O N

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about August 13, 1996, the Board of Pharmacy issued Pharmacist License
22 Number RPH 48782 to William J. Mumbert (Respondent). The Pharmacist License was in full
23 force and effect at all times relevant to the charges brought herein and will expire on December
24 31, 2011, unless renewed.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the suspension, expiration, surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

5. Section 4300 of the Code states:

(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

STATUTORY PROVISIONS

6. Section 4301 of the Code states:

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

• • •

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

• • •

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

• • •

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a

violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

...

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.

7. Section 4022 of the Code states

Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

Dangerous Drugs at Issue

8. **Fioricet** is a brand name for the drug containing acetaminophen, butalbital and caffeine, a dangerous drug in that its procurement requires a prescription

9. **Phrenilin** is a brand name for the drug containing acetaminophen and butalbital, a dangerous drug in that its procurement requires a prescription.

Controlled Substances at Issue

10. **Hydrocodone** is a Schedule II controlled substance as designated by Health and Safety Code section 11055, subdivision (b)(1)(I).

11. **Diazepam**, a generic form of the drug Valium, is a Schedule IV controlled substance as designated by Health and Safety Code section 11057, subdivision (d)(9).

COST RECOVERY

12. Section 125.3 of the Code states, in pertinent part, that the Board may request the administrative law judge to direct a licensee found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case.

FIRST CAUSE FOR DISCIPLINE

(Out of State Discipline)

13. Respondent is subject to disciplinary action for unprofessional conduct under section 4301, subsection (n), due to the fact that Respondent's Nevada license has been disciplined on two occasions, as follows:

a. On or about December 15, 2000, in a prior disciplinary action entitled *Nevada State Board of Pharmacy v. William J. Mumbert, R.Ph., Certificate of Registration #13225* before the Nevada State Board of Pharmacy, in Case Number 00-075-RPH-N, Respondent's license was disciplined by being placed on probation. The Accusation alleged that on or about October 10, 2000, while working at Safeway Pharmacy, Respondent ingested Phrenilin and Fioricet tablets from the pharmacy without lawful authority. Respondent also removed several Phrenilin and Fioricet tablets which he placed in unmarked vials and took with him for later use. Later that evening, Respondent was arrested for driving under the influence, as more fully set forth in paragraph 14, below.

b. On or about December 21, 2010, in a prior disciplinary action entitled *Nevada State Board of Pharmacy v. William J. Mumbert, RPH, Certificate of Registration No. 13225* before the Nevada State Board of Pharmacy, in Case Number 10-079-RPH-N, Respondent's license was revoked. The Accusation alleged that on or about October 12, 2010, Respondent was confronted by his employing pharmacy and admitted to the theft of over 800 hydrocodone/APAP 10/325 tablets and 30 diazepam 10 mg tablets over a period of several months.

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PRAYER

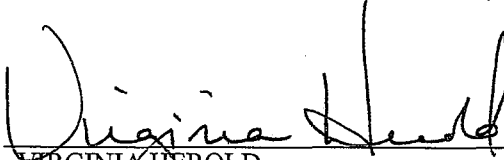
WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board of Pharmacy issue a decision:

1. Revoking or suspending Pharmacist License Number RPH 48782, issued to William J. Mumbert.;

2. Ordering William J. Mumbert to pay the Board of Pharmacy the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3;

3. Taking such other and further action as deemed necessary and proper.

DATED: 12/6/11


VIRGINIA HEROLD
Executive Officer
Board of Pharmacy
Department of Consumer Affairs
State of California
Complainant

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